

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AARON PATILLO)	
Claimant)	
VS.)	
)	
NATIONAL RAIL CONSTRUCTORS)	
Respondent)	Docket No. 222,876
)	
AND)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appealed the November 27, 2001 Award entered by Administrative Law Judge (ALJ) Robert H. Foerschler. The appeal was placed on the Board's summary docket for determination without oral argument. Jeff Cooper was appointed Board Member Pro Tem and participated in the determination of this appeal.

APPEARANCES

Claimant appeared pro se. Respondent and its insurance carrier appeared by their attorney John M. Graham, Jr. of Overland Park, Kansas.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the ALJ's Award.

ISSUES

The threshold issue is the Board's jurisdiction to hear this appeal. Specifically, whether claimant's application for review of the ALJ's November 27, 2001 Award which was filed by claimant on January 3, 2003, was timely.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments contained in the parties' briefs, the Board makes the following findings and conclusions:

Any interested party has 10 days to file a written request with the Board from a final order, award, modification of an award or preliminary hearing award made by an ALJ. Intermediate Saturdays, Sundays, and legal holidays are excluded in computing this 10 day time period.¹ The effective date of the ALJ's Award is the day after the date noted on the award.² The parties' application for review shall be considered timely filed only if received in the central office or in one of the workers compensation division offices on or before the tenth day after the effective date of the award.³

Here, the ALJ's Award was dated November 27, 2001. Thus, the effective date was Wednesday, November 28, 2001.⁴ Not counting the intermediate Saturdays and Sundays that fell on December 1, 2, 8 and 9, the claimant had until Wednesday, December 12, 2001, to timely file an application for review of the November 27, 2001, Award.

But claimant did not file his application for review until January 3, 2003, over a year after the 10 day appeal time had expired. Claimant does not offer any explanation for his delay in filing his appeal, nor does he offer any legal authority that would support the Board's jurisdiction to review the Award.

In the case of *Nguyen*⁵ the Kansas Supreme Court found that the right to an appeal in this state is neither a vested nor a constitutional right, but is strictly statutory in

¹ See K.S.A. 2001 Supp. 44-551 (b)(1).

² See K.S.A. 44-525(a).

³ K.A.R. 51-18-2(b).

⁴ See *McIntyre v. A.L. Abercrombie, Inc.*, 23 Kan. App. 2d 204, 929 P.2d 1386 (1996).

⁵ *Nguyen v. IBP, Inc.*, 266 Kan. 580, 972 P.2d 1386 (1996).

nature. However, where the legislature has provided the right of an appeal, the minimum essential elements of due process of law of notice and an opportunity to be heard at a meaningful time and in a meaningful manner must be satisfied.⁶ The mere filing of an award is not notice to the parties. It is the mailing of the award and the receipt of the award by the parties that constitutes notice. The court held that where the award is misaddressed to the extent that a party fails to receive the award before the running of the 10 day time limitation, notice has not been provided to satisfy due process of law requirements.⁷ No such argument has been made in this case. Claimant does not allege any delay in his receiving the ALJ's Award. Thus, the Board concludes claimant's due process rights were satisfied as claimant was provided with timely notice of the Award.

The purpose of the 10 day time period to file an appeal is to promote finality and to minimize delay in a workers compensation case.⁸ The rule prevents an interested party from challenging the ALJ's actions long after the ALJ's award has been made. The purpose of the rule is exemplified by this case. Accordingly, because claimant failed to file his application for review within the time limitations of K.S.A. 2001 Supp. 44-551 (b)(1), the Board does not have jurisdiction to review the Award.

Award

WHEREFORE, it is the finding, decision, and order of the Board that claimant's application for review filed with the Division on January 3, 2003, was out of time and this appeal should be and is hereby dismissed. The ALJ's November 27, 2001, Award remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of June 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁶ See *Nguyen* at 588.

⁷ See *Nguyen* at 589.

⁸ See *Gray v. Hercules Powder Co.*, 160 Kan. 767, 772, 165 P.2d 447 (1996).

c: Aaron Patillo, pro se
John M. Graham, Jr., Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director